MST

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7494 OF 2006

Mahadeo Dnyanoba Wankhede Petitioner
versus
Sau Madhura M. Wankhede Respondent

Ms.P.P.Tendulkar for petitioner.
Ms.Vidya s. Gole for respondent.

CORAM : A.S.OKA, J.

DATE : 01st March 2007

PC :

1. The submissions of the learned advocates appearing for the parties were heard on the last date. Writ Petition was not disposed of on that day to enable the petitioner to pay the amount of costs to the respondent.

2. The petitioner is the respondent-husband in Marriage Petition No.164 of 1999 filed by first the respondent-wife herein. The petition has been filed praying for a decree for divorce by the first respondent on the ground of cruelty. In the said petition an application was filed under section 24 of the Hindu Marriage Act, 1955

for grant of interim alimony. By order dated 25th March 2001, the learned Trial Judge directed the petitioner to pay maintenance @ Rs.1,000/- per month to the second respondent. The second respondent is the son of the petitioner.

3. An application was made by the first respondent for striking out the defence of the petitioner and praying for stay of proceedings of counter claim filed by the petitioner on the ground that the petitioner has committed default in payment of interim maintenance. By order below Exhibit-52, the learned Trial Judge ordered striking out the defence of the petitioner. By a further order dated 15th March 2005, the learned Trial Judge stayed the proceedings of the counter claim filed by the petitioner. An application was made by the petitioner for setting aside the order of striking out the defence and granting stay to the proceedings of the counter claim. The said application has been rejected by order dated 15th September 2006. The said order has been impugned in this petition under Article 227 of the Constitution of India.

4. It is not in dispute that now the entire amount of arrears of maintenance upto date has

been deposited by the petitioner in this Court. An affidavit has been filed by the petitioner recording the aforesaid fact. In paragraph no.3 of the affidavit of the petitioner he has given an undertaking to pay the interim maintenance as per the order of the Trial Court. The undertaking is accepted.

5. Considering the payment of entire arrears and the undertaking incorporated in the affidavit of the petitioner, in my view, the order striking out the defence of the petitioner and the order granting stay to the proceedings of the counter claim deserve to be quashed and set aside. However, the petitioner will have to pay substantial amount by way of costs of this petition to the respondents. The amount of costs is quantified at Rs.7,500/-.

6. When the submissions were heard on 22nd February 2007, I had suggested to the advocate for the petitioner that the petitioner should deposit the costs amount of Rs.7,500/- before today. The advocate for the petitioner states that the petitioner declined to pay the said amount on the ground that there is no written order passed by this Court to that effect. In

view of this stand taken by the petitioner the learned advocate for the petitioner stated that she is not in a position to appear in this petition today. However, as she has already made her submissions, discharge cannot be granted to her at this stage.

7. The petition is disposed of by passing following order :-

a) The order passed by the Trial Court by which the defence of the petitioner was struck out and the order by which the proceedings of counter claim filed by the petitioner was stayed, are set aside subject to condition that the petitioner will pay costs of Rs.7,500/- to the respondents within a period of two weeks from today;

b) The deposit of the said amount with the Trial Court within the stipulated time will be treated as sufficient compliance of this order;

c) The undertaking of the petitioner which is incorporated in the affidavit dated 27th February 2007 is accepted;

d) Hearing of the petition pending in the Trial

Court is expedited and Trial Court is directed to decide the same as expeditiously as possible and preferably on or before 31st October 2007;

e) Petition is disposed of in above terms.

8. At this stage the learned advocate for the petitioner prays that acceptance of the undertaking given by the petitioner will come in the way of the petitioner while applying for modification of the order granting maintenance. There is no merit in this submission as the undertaking is to comply with the order passed by the Trial Court which is operating as of today. In case of change of circumstances, both the parties can always apply for modification of the order regarding payment of interim maintenance and if such applications are made by either parties, the Court is bound to decide the same in accordance with law.

(A.S.OKA, J.)